



January 5, 2000

Mr. James J. Elliott
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Attorneys at Law
188 North Graham
Stephenville, Texas 76401

OR2000-0024

Dear Mr. Elliott:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the “act”), chapter 552 of the Government Code. Your request was assigned ID# 132413.

The Stephenville Independent School District (the “district”) received a request for information relating to amounts the district paid to a law firm for legal services, including itemized statements for charges regarding the “school pregame prayer issue.” You have released some of the information responsive to the request, but seek to withhold detailed itemized billing information under sections 552.103 and 552.107 of the Government Code.¹

Section 552.103(a) excepts from required public disclosure information

relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party[.]

¹Although you contend that the district is not in possession of the requested detailed billing information, you have submitted such information for our consideration, and we will rule with respect to such information. Please note that “public information” subject to the act is defined in section 552.002 of the Government Code as “information collected, assembled or maintained under a law or ordinance or in connection with the transaction of official business . . . (1) by a governmental body . . . or (2) for a governmental body and the governmental body owns the information or has a right of access to it.” *See also* Open Records Decision No. 499 (1988) (records held by private attorney employed by municipality that relate to legal services performed at request of municipality are subject to act).

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

Here, you advise that individuals supporting or opposing the allowance of prayer before high school football games “have made threats of litigation against the district in connection with this matter,” and that the law firm whose billing information is at issue here was retained “as a direct result” of such communications. In our opinion, you have not shown that the district reasonably anticipates litigation in this matter. Therefore, none of the information at issue may be withheld under section 552.103.²

Although you raise the attorney-client privilege in the context of section 552.101 of the Government Code, this privilege is now treated by this office as an aspect of section 552.107(1), which protects information “that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.” See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney’s legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. See also Open Records Decision No. 589 (1991) (protected information in attorney billing statements). In our opinion, you have not demonstrated that any of the information you submitted as responsive to the request reflects client confidences or attorney advice such as to fall within the scope of section 552.107(1). None of the information may be withheld under that provision. The submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

²We note that you also contend that the information at issue includes “attorney work product.” This office treats the attorney work product privilege as an aspect of the section 552.103 and 552.111 exceptions. Section 552.103 protection extends to work product prepared for reasonably anticipated or pending litigation, and section 552.111 protection extends to work product originally prepared for litigation once the litigation has concluded. See Open Records Decision No. 647 (1996); *National Tank Co. v. Brotherton*, 851 S.W.2d 193 (Tex. 1993). In our opinion, you have not shown that the information at issue was prepared for litigation. Therefore, none of the information may be withheld as attorney work product.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 132413

Encl. Submitted documents

cc: Mr. Toby Mills
Route 6, Box 335
Stephenville, Texas 76401
(w/o enclosures)